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ABSTRACT

State regulation of nonpublic schools in Nebraska is the topic addressed in this paper. The paper examines recent court decisions in the state relating to this issue and also traces the progress and eventual fate of several bills introduced in the Nebraska legislature concerning waiving requirements for nonpublic schools. Nonpublic schools in Nebraska must meet two qualitative essentials to receive state approval: compulsory attendance and state certification of teachers. Nebraska does not regulate student performance through statewide testing or graduation requirements. Schools that do not meet the state standards are considered illegal schools, and both the operators and the parents are subject to prosecution by county authorities. Some fundamentalist religious groups in Nebraska have challenged the state's right to apply school approval standards to nonpublic schools. In one case examined in detail, "Nebraska v. Faith Baptist," Faith Baptist Church was found to be operating an illegal school because the teachers had not been certified by the state. The state's effort to close the school because of noncompliance with state school laws was successful. (Author/LL)

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THE CLASH BETWEEN PRIVATE RELIGIOUS SCHOOLS AND STATE REGULATIONS

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Introduction

The legalisms of compelling American children for a period of time to attend schools have their origin in the pre-Revolution American colonies. Early, schools sponsored by churches or organized as charity schools made education available, but by the middle of the eighteenth century schools under the auspices of town governments became predominant in the Middle and New England colonies. For example, the Massachusetts School Laws of 1642 and 1647 stipulated the obligation of towns of certain sizes to maintain schools. The Connecticut School Law of 1660 demanded that education must be provided from parents to children, if a school was not made available; and, the Plymouth Colony School Law of 1677 required that every town of fifty families should maintain a grammar school -- and stipulated how taxes would be levied to support the school.

Those early beginnings were interrupted by the Revolutionary War, which itself, halted any extensive development of the idea of common schools with children compelled to attend. It was not until the nineteenth century that, based upon those early colonial laws and coupled to a developing consciousness of what kind of nation the United States of America should be, that the idea of publicly supported, civilly governed schools came to the fore. Systematically, through the nineteenth century, the states accepted the responsibility for education of their citizens, organized schools under civil governance, extended and expanded the curriculum. By 1982, forty-nine of the states had active compulsory attendance laws for resident children, typically requiring nine or ten years of attendance within the age span of six to fourteen-sixteen.

A general pattern is discernible. From slightly different origins, and different points in time, every state has accepted the obligation of providing free public education. Schools of the United States are quite different in many ways, yet there is a product commonality. If it were to be argued that there is a system of public education in the country, the basis for the argument would be that the schools are state controlled, nonsectarian, tax supported, open admission -- with attendance compulsory if the school age child is not in attendance at some other educationally equivalent instructional setting.

When the last factor is matched with (1) parental rights in the upbringing of a child; (2) the free exercise of religion clause of the First Amendment; (3) the bar to government establishment of religion in that same First Amendment; (4) the desire of many Americans to have their child in a secular and sectarian learning setting, problems arise. Repeatedly, citizens have sought the protection of the judiciary in special problems that have arisen between them and their public schools, as governmental units. Their skeptical views of the adequacy of secularized curriculum have led them to avenues for education that often do not conform to statutory mandates -- and through which they run afoul of state laws.

In Meyer v. Nebraska 262 U. S. 390 (1922) an instructor in the Zion Parochial School taught a ten year old child to read the German language, in violation of the Nebraska statutes. The curriculum of the school, maintained by the Zion Evangelical Lutheran Congregation, was harmonious with the desires of the school patrons. Meyer sought relief in the courts, and finally, the Supreme Court provided relief through the Fourteen Amendment; i.e., stipulating that he could not by a state law be deprived "of life, liberty, or property without due process of law." The court made it clear by allusions to common law and to the Ordnance of 1787 that substantial parental duties and freedoms could not be diminished by state law.

In Pierce v. Society of Sisters 268 U. S. 510 (1925) the Supreme Court addressed a question about religion and schools in Oregon. That state had passed a compulsory education law, but also stipulated that the attendance could only be in a public school. The Court did not question compulsory attendance in schools as necessary to meet state imposed minimums of quality, but did not find in that posture any need to suppose that only publicly operated schools could meet the minimums. Reviewing the religious order of the Society of Sisters, its schools, and church-sponsored education generally, the Court struck the Oregon statute. At the same time, it acknowledged a state's interest in assurances that the minimum standards of quality would be met in private schools, just as they would be met in the state controlled public schools.

In Wisconsin v. Yoder 406 U. S. 205 (1972) the Supreme Court was asked to rule on certain conflicts between the Amish religious doctrines and compulsory education laws as those became clear in the 1950s and 1960s. As teacher certification was upgraded, teachers could not be recruited from within the Amish groups, for lack of minimum academic accomplishments. When compulsory education laws were extended beyond grade eight, Amish children were compelled into classes dealing with subjects that were foreign to Amish thought, and beyond the realm of influence by Amish teachers. Those characteristics prevailed in most of the states where Amish people lived. Had the states, by accretionary legislation, violated the religious freedoms of the Amish?

Reviewing the record of the Amish people from pre-Revolutionary War times, the Court found that they successfully maintained a self reliance which was beneficial to the larger society. They contended that their education, religion, and vocation were inextricably bound together in the Amish beliefs. Moreover, they wanted their children in public schools through grade eight as the necessary minimum, for the basic skills of reading, writing, and arithmetic were seen as essentials. Convinced, the Court supported them on the religious freedom issue

and, in effect, created an exemption to the compulsory education laws of every state for Amish schoolchildren.

The question of state control over education when challenged by religious groups who want to accommodate some aspects of their doctrine is not new on the American education scene. Several questions within that larger issue have been resolved. Several lack for resolution. This paper, in its continuation, will trace the conflict in one state, Nebraska, with a close examination of the state's 1982 legislature in action on that issue.

A Case Study

The State of Nebraska, in common with other states, has felt the surge of religious Fundamentalism. New non-public schools, approved by the State Department of Education during the years 1978-82, numbered eighteen. Those probationally approved over the same period numbered seventeen. All but a few indicated by their name that they are a Christian school. Enrollments ran from three to a "projected" 175, though the vast majority fell under forty.[1] The SD of E reported that twenty-one of the forty-two schools, self classified as Fundamentalist, are approved and employ teachers who are certified by the state. Seven schools face litigation. In addition, two families have been charged with violation of compulsory education laws by instructing their children at home.

In Nebraska, non-public schools are not ignored. Each school stands as being accredited, approved, or having received North Central accreditation. What is required for approval? There are two qualitative essentials: (1) compulsory attendance and (2) state certification of teachers.[2] Nebraska does not regulate student performance through state wide test or graduation requirements.

Figure 1

Nebraska School Approval Standards

Compulsory attendance:	Nebraska parents or guardians must have their children of ages 7-16 attend an approved school or be subject to prosecution.
Certification of teachers:	A teacher or administrator in an approved school must have a current teaching or administrative certificate. This requires a baccalaureate degree. Not having a certificate subjects a person to prosecution for "practicing without a license."
Performance of students:	Though there is no regulation by testing, schools must meet minimum standard for staffing, certification, program offering and library. In return the district maintains local control of specific course content, methodology, graduation requirements and diplomas.

If the school does not meet these standards, it is an "illegal school" and both the parents and the operators are subject to prosecution by county authorities. This is being done. An example of a school in violation is the Faith Baptist Church in Louisville, Nebraska, located about twenty miles southwest of the city of Omaha.

Faith Baptist Church was found in violation of school laws because the teachers are not certified by the state as required by state law. (Nebraska v. Faith Baptist 301 NW2 & 571, 1981). In the majority opinion by the Supreme Court of the state, the court found that "Although parents have a right to send their children to schools other than public institutions, they do not have the right to be completely unfettered by reasonable government regulations as to the quality of the education furnished." The state sought to enjoin the operation of the school because there had been no compliance with the school laws of the state, and won. On what grounds did the church school fight its case? Principally, on the First Amendment rights as to freedom of religion

and on the Ninth Amendment rights to bear, raise and educate their children as they saw fit.

On August 29, 1977, Rev. Everett Sileven, pastor of the church, began to operate the Faith Christian School. The curriculum is Accelerated Christian Education (ACE), and the children work at their own pace through packets (PACE) which contain information and self tests. The teaching function is not really to teach, but to supervise, monitor, or help students work their way through the packets according to PACE directions. The instruction is Bible oriented; even mathematics is interspersed with biblical sayings. It is not unlike a correspondence course, with the addition of supervisors.

The school has refused to submit the names and addresses of all students enrolled in their school to the SD of E, has stated that it will not request approval of the ACE program even though the SD of E has, in advance, indicated likely approval, and has refused to employ accredited teachers. It is the schools' position that it operates under God's laws and thus is not subject to the laws of man or the State of Nebraska. Because the state school laws require inspection of the schools by the county superintendent, school officials refuse to submit to such control, contending that the state has no right to inspect God's property. Nebraska does seek to impose minimum standards, and the U.S. Supreme Court stated "A state always has a legitimate concern for maintaining minimum standards in all schools it allows to operate" (Lemon v. Kurtzman 403 U. S. 602, 1971), a reiteration of Pierce.

The Nebraska Supreme Court, in its 1981 decision, noted that a baccalaureate degree and a teacher's certificate does not assure that each teacher will be a good one, "anymore than one who has obtained the appropriate training and education will become a good engineer, lawyer, beauty operator, welder or pipe-fitter." However, they do "...believe it is a reliable indicator of probabilty of success in that particular field."

Chief Justice Norman Krivosha, of the Nebraska court, in part dissented stating, in his opinion, it was not necessary for teachers to hold a baccalaureate degree. This, then, became the minority opinion. He did agree with the majority opinion which held that the state may adopt reasonable regulations requiring approval of curriculum, disclosure of attendance records, or even periodic testing. In dissenting, he said,

> "Under our holding today, Eric Hoffer could not teach philosophy in a grade school and Thomas Edison could not teach the theories of electricity. While neither of them could teach in primary or elementary grades, both of them could teach in college. I have some difficulty with a law which results in requiring that those who teach must have a baccalaureate degree, but those who teach those who teach need not. I could accept a regulation which required instructors in such schools to satisfy the state that they were adequately trained to perform the functions they were hired to perform."

Krivosha also noted that the State Board of Education waives the requirement under certain conditions deemed to be emergency in nature and when equivalency prevails.[3] What is the equivalency clause meant to be? And if teacher certification can be waived under some conditions, is it necessary for all private church-sponsored schools?

As a result of Rev. Sileven's operation of the school, in the fall of 1981, the Cass County Court ordered the school padlocked. Since the school occupies the lower level, the basement of the church building, doors to the church were locked but the court said that the padlocks would be removed for activities other than the school. In October, Rev. Jerry Falwell, leader of the Moral Majority, from Lynchburg, Virginia, held a rally at the Faith Baptist location that was filmed for national viewing. Though by this time, the court ordered padlock had already been removed, Rev. Falwell had padlocks put back on the church doors. He drew attention to the staged padlocking without explaining that they had previously been removed, or that, originally, they were there only to prevent the continued functioning of an illegal school. Religious services in the church building were never in question.

The Nebraska Civil Liberties Union entered, pointing out that the court ought to have confined the sanction to the wrongdoer, Rev. Sileven, but not to all the members of the Faith Baptist Church. By padlocking the church (and school) doors, the NCLU felt that the sanction also included the church, an act which could be interpreted as a violation of First Amendment rights. The NCLU, however, in a policy statement, held that Rev. Sileven ought to abide by state rules of submitting the names of students and the curriculum to the state. It also stated that "A requirement that all teachers be certified by the state would place an unconstitutional burden on the exercise of religion, if less restrictive alternatives are available to accomplish the state's recognized interest."

By February, 1982, Faith Baptist Church, in operating its school illegally, had been found guilty of so doing by the Cass County Court, and had been enjoined from the operation of an elementary and secondary school because there had been no compliance with the state's school laws.

However, two weeks after the Supreme Court decision, observers noted school age children entering the Faith Baptist Church, which houses the school. A hearing was then set to determine if the school was operating in violation of a court order. It was so found, and the director of the school, Rev. Sileven, was jailed for operating a school in contempt of a court order. In sentencing Rev. Sileven, Cass County Judge Raymond Case stated, "You have the keys to the jail in your pocket. If I get assurances the school will be closed, you can walk out the door." Sileven refused to give such assurance. The jailing capped a three battle over the school which first began to operate in August of 1977.

History and Current Events

In September, 1979, the Cass County Court granted a permanent injunction against the operation of the Faith Christian School. It was allowed to stay open pending appeals. The Nebraska Supreme Court upheld the decision in January, 1981. The case was appealed to the U.S. Supreme Court which announced in October that it would not hear the case. In March, 1982, thirteen parents of former pupils filed a lawsuit in U.S. District Court challenging the state's right to close the school. This was the first time any parents' names had been made public. In April, 1982, Senior U.S. District Judge Richard Robinson dismissed the case and added "Under the circumstances here, plaintiffs' alleged injury seems precipitated more by obstinance than by the caprice of the state. In short, plaintiffs failed to make out a case for injunctive relief."

After the jailing of Rev. Sileven the school continued functioning under the direction of Mrs. Sileven. Thus, the court began to consider further action to shut it down. One move might have been to take the parents of the children to court. However, further action against individuals would have required opening new legal proceedings.

On the Sunday after the jailing, a full page ad appeared in the local newspaper.[4] Though it had no disclaimer, it did refer people to a group called Nebraskans for Religious Freedom. The article stated, "A minister has been jailed, not because he is a danger to society, but because of his religious convictions." The ad also advocated changes in the Nebraska laws and commented on bills currently being considered in the Nebraska Legislature. A call to the advertising department of the newspaper found that the ad cost $4,912.32. Who paid for it? That is not known, nor is it known who has and who continues to pay for court battles and appeals. Some observers, noting the high costs of the whole endeavor, have concluded that there are both economic and religious interests which have come together in a religion-education conflict.

Thirteen days after the jailing, the Faith Christian school closed voluntarily, and Rev. Sileven was freed. In an interview, Rev. Sileven stated that he is against most forms of governmental regulations--including licensing of engineers, doctors and lawyers. He said he was not against general guidelines, but against "dictatorial" intrusion into individual lives.[5]

Legislation and Politics

The Nebraska Legislature is a unicameral body, having only one legislative body rather than the two traditional bodies of senate and house. In order that each bill may be given the concern and review that a two house system would afford, the Nebraska body provides that each bill be given three readings, thus requiring three votes per bill. These three readings are called general file, select file, and final reading. There are forty-nine members of the body; twenty-five votes are necessary to pass a bill. A legislative bill (LB) may be sponsored by an individual or group of senators or by a committee. If it is a committee bill, it will come out onto the floor by a majority vote in committee and will carry the name of the chairman of the committee. The Unicameral meets annually and on alternate years has a sixty day and ninety day session. Each begins in January. Short sessions fall on even numbered years, which are also election years.

Three bills were discussed in the Education Committee of the 1982 session concerning waiving requirements for non-public schools. Identified by their actual legislative bill numbers, they were LB 607, LB 652, and LB 472a. The professional education community stood firmly against any change in the current structure, though they generally felt that some accommodation would probably be made by the legislature. In their view, any change would mean a lowering of standards for non-public schools. Commonly, educators stated, "They say it's church; we say it's education." There was some doubt as to whether any of the

above mentioned bills would even make it out of committee. For the Christian Fundamentalist educators, the issue was First Amendment rights vs. public school bureaucracy. With no compromise acceptable, this was a highly unusual stance for a legislative body, which was in the business of compromising, to accommodate.

LB 607 was introduced by Senator Howard Peterson, of Grand Island, one-time mayor of Grand Island and also one-time president of that city's Chamber of Commerce. Various pieces of legislation have been introduced by Sen. Peterson since he was elected in 1980, among them, a Creationism bill that did not pass. LB 607 was the simplist and least restrictive of the three bills. The essence of the bill was that a non-public school could gain waivers by filing with the Commissioner of Education from parents and guardians of all pupils enrolled a statement declaring that the statutes interfered with religious instruction. NCAPE, Nebraska Coalition of Alternatives to Public Education, a coalition of Catholic, Lutheran, and Seventh Day Adventist groups was the source of some of the provisions of the bill. The Baptist and Mennonite groups supported this bill, and Governor Charles Thone endorsed it. The bill required no testing and did not require that the religious group be a recognized or established church.

LB 472a was an appropriation bill that became moot at the end of the 1981 session (one year earlier). By Parliamentary maneuver, John DeCamp, of Neligh, was then able to adopt an amendment to the vacated bill. Senator DeCamp is a power in the Legislature having served there for a number of years. Originally elected while still serving in Vietnam, he has been a controversial senator up for re-election in 1982. LB 472a waived the requirement of a teacher's certificate for persons teaching at a private, denominational or parochial school. However, the director, and the organization of parents would have to file an affidavit with the SD of E stating that their religious beliefs were violated by teacher certification provisions. Names of students and their parents or guardians might be required to demonstrate that 1) the child is

receiving regular instruction, 2) the instruction is from a structured curriculum and 3) the child is appropriately proficient in basic disciplines of learning.

LB 652 was introduced by the Education Committee, chaired by State Senator Jerry Koch. Koch is an Omaha area senator who is a public educator, having taught for seventeen years in Franklin Public Schools and Westside Community Schools. He has been and continues to be the co-ordinator of Omaha Suburban Area Council of Schools. Active in a number of service and honorary organizations, he was a lobbyist to the legislature before his election in 1972. Up for election in 1982, Senator Koch was questioned at times by public school supporters about his position on this issue. Some fellow educators feel that he took it in order to control the direction of the bill on the floor; i.e., it would be better in his hands than left to others. LB 652 provided that the lay governing board or parent organization may file an application for waiver of certain school laws if the school does not accept state or federal funds, if the church has been established in the state for ten years prior to filing and including stipulations that such church beliefs are incompatible with state regulations, then certification of teachers would be waived for persons having an equivalency in earned college credit. (The last requirement was later struck.) With the application, the names and addresses of the parents and of the children enrolled in the school would go to the SD of E. Curriculum requirements would be the same as current law; curriculum would have to be approved. Parents would have to sign an affidavit declaring their knowledge of children attending a non-approved school.

LB 652 was based, in part, on Iowa law in so far as requiring that the church be "recognized" and "of ten years duration." Some observers questioned whether those two facets would hold up in a constitutionality test. Whom should the church be recognized by, the state? Is ten years duration discriminatory? The Nebraska Civil Liberties Union declared that the word "recognized," not defined, vested an undue amount of discretion in the SD of E. In addition, the

United States Constitution grants a categorical right to the free exercise of religions. The ten year clause was labeled discriminatory among religions by the NCLU.

Some professional public education groups said they might possibly be able to live with LB 652; however they preferred continuation of the status quo. In effect, LB 652 would add a third tier to the school picture in the state.

Figure 2

Categories of Education

public education
non-public conforming (or approved)
non-public waivered

The bill drew the least support from church school officials who wanted to run their schools without any form of government interference. All three bills would require compulsory attendance and adherence to health, fire and safety regulations.

In early February, the Education Committee made its choice and advanced LB 652 to the legislative floor. It would now be subject to debate, amendment, and three rounds of voting. The vote was not unanimous to send it out of committee. Three of the eight members voted against it saying they favored retaining the status quo. The other two bills were dead. Several other committee members attached a disclaimer saying that they advanced the bill only for debate purposes. Very quickly an amendment was offered which changed "recognized" to established, and required that the waiver be applied for annually.

Rev. Sileven of the Faith Baptist Church called the bill an unacceptable infringement on people's religious freedom. He also stated that he might challenge the legality of a unicameral legislature and that he might run for the office of state senator to "restore individual rights." Sen. Koch, chairman of the Education Committee, stated that he felt he had made as many concessions as

possible for Christian schools. NCAPE opposed LB 652 but was willing to look at the amendments. The Nebraska Catholic Conference reiterated the long held Catholic school position of accepting, meeting, and surpassing reasonable state standards for education. The attorney-general issued an opinion finding fault with several sections of the bill: ambiguous in recognition clause, and unconstitutional in ten year clause; and, stated that requirements and provisions of statutes were found not to be unconstitutional in State ex rel Douglas v Faith Baptist Church.[6] Under LB 652, schools had no obligations to deal with health-related problems.

Senators DeCamp and Peterson, who had authored the other bills, offered an amendment creating a more detailed process for church schools wishing to obtain waivers. The amendment restructured LB 652. The request by the lay board would have to be accompanied by information about the school, an explanation of why the laws were an infringement; and waivers would be granted for teacher certification and instructional program requirements if teachers were shown to be qualified to teach and counsel. It also eliminated the ten year clause. Instead of having to apply for waiver, a wording change provided for a right to waive law through the filing of a notice. Applying may result in the possibility of refusal; right to waive does not. Applying also implies that the state is above the school, a concept the Fundamentalists reject. The amendment also carried an emergency clause, making the law effective immediately, thereby halting any pending litigation. Senator Koch said he would support the bill.

On March 9th, LB 652 received first round approval on the floor of the Unicameral. The vote was 25-23, 1 absent, and debate took nearly a full day. Lobbying had been intense. Members of the Fundamentalist school movement talked to senators individually, flooded them with mail, and were there in the galleries with some parents and school children each day the bill appeared on

the agenda. (It appeared on the agenda several times before the actual day that debate took place.) The lobbying efforts of the public domain, however, were left to the paid staff of professional public education organizations.

The bill passed its first voting test without the clause allowing waivers from state regulation of curricula. Another amendment was accepted--specifying that the law would expire in four years. At the end of that time, the law could be extended by a vote of twenty-five. A spokesman for the Fundamentalists allowed that he was pleased, and thank you notes flooded those who voted for the passage. The bill was now advanced to select file in the Unicameral and would have to survive two more votes to become law. At this point the legislature had used up half its sixty days.

On March 20th, supporters of the bill offered a compromise amendment designed to help the proposal secure passage on second reading. It would require an equivalency rating for teachers. K-9 teachers would have to complete sixty credit hours of college work over a four year period and 10-12 teachers would be required to complete 120 credit hours, also phased in over four years. This, too, would constitute some form of government regulation. The amendment did not pass. A kill motion was filed on the bill, but it failed, 20-25. Sen. DeCamp made a last effort to enhance the possibility of passing LB 652. He offered an amendment which would give the SD of E enforcement authority and eliminate criminal penalties for persons violating Nebraska's compulsory education laws. This, if adopted and passed, would call a halt to prosecution of persons operating non-public schools.

On April 5th, LB 652 failed its second round test, 20-23. The vote left the issue still at second round state. An Omaha senator attempted an amendment that would repeal state certification for all teachers. That failed 6-32.

The Legislative Decision and Future Prospects

There were two days left in the session of the Nebraska Unicameral. There was a myriad of bills to be voted upon; sessions were planned to run until 9 PM every day of the final week. The Fundamentalist Church school issue was unresolved. Sen. DeCamp asked the body to vote to suspend the rules in order that an amendment to LB 652 be offered. The result was a vote, 23-21, not to suspend the rules to consider the compromise amendment. Thus, the proceeding drew to an end any thought of change in the Nebraska school laws in 1982. The bill died, and the entire process will have to begin again if the issue is to be resolved.

The next session begins in January, 1983, and will last for ninety days; it will be the long session; and it will not be an election year. There is time over the summer and fall for communicating and meeting. Surely to be discussed will be a survey done for the Omaha World-Herald, the state's primary newspaper, that showed that 65% of the people polled thought that people should follow state laws in cases pertaining to the Christian school issue. Also to be considered again will be these facts. As of July, 1981, thirty-five states do not require teacher certification for non-public schools. A similar number do not require testing for non-public schools. Compulsory attendance of some form, however, is required in all but one state.[7]

What now is happening to the Faith Baptist School in Louisville? All that the public knows is that the members met in private on April 14, 1982, to decide whether or not to open their school. Their decision was kept private. Would they risk jail again? Possibly so. Rev. Sileven issued a written statement saying that in the future they will give no interviews but communicate with the media by press release only. Their choices, according to Sileven are "to teach our children at home, to reopen the school and take the wrath of the state (or) sell our possessions and move from the state." The pastor of another Fundamentalist Church predicted that "Nebraskans in 1982 will see mass arrests, fines,

imprisonments, and parents losing custody of their children to the state." A State Board of Education member noted that the board can exempt schools regardless of whether the state law is changed.[8] Obviously, there will be more action and more decisions. Are issues decided by putting people in jail? Can society be flexible enough to accommodate new trends? Should it be?

One outcome of the issue was that incumbent Governor Charles Thone did not receive the Nebraska State Education Association endorsement in his re-election bid. Very clearly, it was partially tied to his stand on the Fundamentalist Christian school issue. Why did he enter the issue? All one can do is theorize. One knowledgeable source said Thone did it for political reasons, that he did not want to alienate his supporters. They are part of the Republican right wing, and this is an election year. Does the party of the governor and legislature make a difference in this kind of issue? Again, a reliable authority theorizes that there may be slightly more sympathy for the Fundamentalist position among Republicans in Nebraska.

One final note. On April 14th, an article appeared in the Omaha World-Herald entitled "Moral Majority Polls Candidates On Taxes, Schools, Other Issues." The letter, signed by Rev. Sileven of the Faith Baptist Church of Louisville, along with a questionnaire was sent to state candidates for office. The questionnaire asked, among other things, whether they "claim to be a born-again Christian" and whether they believe they should "consult God, the Bible and Christian leaders before making decisions." Apparently, the Fundamentalists desire power over decisions in government, but find government power over their lives undesirable--at least in the realm of education.

Summary

In recent time, cases dealing with the question of state regulations of church sponsored schools have been addressed to the United States Supreme Court on appeal from three state supreme court decisions. The cases were:

1. State of Ohio v. Whisner 357 NE 2d 750, 1976
2. Kentucky State Board of Education v. Rudisil 589 SW 2d 877, 1979
3. State of Nebraska v. Faith Baptist Church 301 NW 2d 571, 1981

The Court has been unwilling to review any of the state supreme court rulings. Although the rulings have not had identical operational results, each has been consistent with its own constitution and legislation. By refusing these cases, the Court has not become involved with a re-examination of its minimum standard rule established for non-public schools in Pierce in 1925.

If it is acknowledged that the surge of sentiment for church sponsored schools, unfettered by state regulations will continue through the 1980s, it does not seem likely that the federal judiciary will come down on this side of the question. Given opportunity to do just that, it has passed the question back to the states. It is then, a state question: states may impose on private schools those regulations which are reasonable, and regularly imposed upon public schools as the minimum standards necessary to assure that secular aspects of education are adequately accommodated. Obviously, these minimum standards are going to vary across the nation, as each state's legislative process becomes the forum for addressing the question, within the constitutional constraint of those states.

Notes

1. Nebraska Department of Education table dated August 31, 1981
2. See Rule 14 Revised, Regulations and Procedures for Approving the Continued Legal Operations of All Schools and the Opening of New Schools, Nebraska Department of Education
4. Omaha World-Herald, February 28, 1982
5. Omaha World-Herald, March 3, 1982
6. Opinion #196, February 16, 1982
7. Nebraska Department of Education. Non-Public School Survey, 1981
8. Omaha World-Herald, February 23, 1982